

ENVIRONMENTAL QUALITY

CHAPTER 55

CECRA REMEDIATION

Sub-Chapter 1

Listing and Delisting Facilities
for Remediation under CECRA;
Ranking Facilities on a Priority List

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Sub-Chapter 1

Listing and Delisting Facilities
for Remediation under CECRA;
Ranking Facilities on a Priority List

17.55.101 PURPOSE (1) The purpose of this subchapter is to establish procedures for listing and delisting facilities for remediation under the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA) and to establish procedures and criteria for ranking such facilities on a priority list. (History: 75-10-702, 75-10-704, MCA; IMP: 75-10-702, 75-10-704, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99.)

17.55.102 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions in 75-10-701, MCA:

(1) "Beneficial use" means a use of water designated under the appropriate classification in ARM 17.30.621 through 17.30.629 and 17.30.1006.

(2) "Free product" means a hazardous or deleterious substance or a material containing a hazardous or deleterious substance that is present as a non-aqueous phase liquid.

(3) "Friable asbestos-containing material" means any material containing more than 1% asbestos by weight which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.

(4) "Primary contact activities" means activities that involve direct contact with water including but not limited to swimming, wading, or fishing.

(5) "Sensitive environment" means:

(a) a terrestrial or aquatic resource, including wetlands, with unique or highly valued environmental or cultural features;

(b) an area with unique or highly valued environmental or cultural features; or

(c) a fragile natural setting. (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99.)

Rules 17.55.103 and 17.55.104 reserved

17.55.105 CECRA PRIORITY LIST (1) The department shall maintain and update, on a semi-annual basis, the CECRA priority list. The CECRA priority list must include all facilities that are listed pursuant to ARM 17.55.108 and those facilities listed as of April 23, 1999. The CECRA priority list will identify each facility by name, town or city, and county, and will indicate the current rank of each facility.

(2) Inclusion on the CECRA priority list or the rank of a facility on that list is not a precondition to department action under CECRA or any other applicable law.

(3) Delisting a facility on the CECRA priority list pursuant to ARM 17.55.114 does not relieve a person liable or potentially liable under 75-10-715, MCA, from the responsibility to conduct remedial actions, including operation and maintenance, required by the department. (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99.)

Rules 17.55.106 and 17.55.107 reserved

17.55.108 FACILITY LISTING (1) The department may list a facility on the CECRA priority list if the department determines there is a confirmed release or substantial threat of a release of a hazardous or deleterious substance that may pose an imminent and substantial threat to public health, safety, or welfare or the environment.

(2) Prior to listing a facility on the CECRA priority list, the department shall provide the opportunity for public comment, as follows:

(a) The department shall publish a notice of the proposed listing and a description of the nature and severity of the threat in a daily newspaper of general circulation in the county where the community most likely to be threatened by the facility that is proposed for listing is located.

(b) The notice must provide 30 days for submission of written comments to the department regarding the proposed listing.

(c) The department shall notify the county commissioners, local boards of health created pursuant to 50-2-104 through 50-2-107, MCA, and governing bodies of cities, towns, and consolidated local governments in the community most likely to be threatened by the facility that is proposed for listing.

(d) The department may conduct a public meeting in the community most likely to be threatened by the facility that is proposed for listing without a specific request for such meeting.

(e) The department shall conduct a public meeting in the community most likely to be threatened by the facility that is proposed for listing upon written request within the comment period by 10 or more persons, by a group composed of 10 or more members, or by a governing body of a city, town, or county.

(f) The department shall consider and respond in writing to relevant written comments properly submitted during the comment period or at the public meeting.

(3) If the department lists a facility on the CECRA priority list and remedial actions to address the release or threatened release of hazardous or deleterious substances at the facility are required by another state program, the department shall provide a written rationale for listing the facility on the CECRA priority list. The department shall place this document in a facility file maintained by the department.

(4) Any person may submit a request to the department to list a facility on the priority list. The request must be in writing and contain the rationale for the proposed listing and documentation or confirmation of the release or threat of a release. If the department determines listing may be appropriate, compliance with the provisions of this rule is required. (History: 75-10-702, MCA; IMP, 75-10-702, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99.)

Rules 17.55.109 and 17.55.110 reserved

17.55.111 FACILITY RANKING (1) The department shall rank each listed facility that is determined by the department to require remedial action and the ranking decision will be made in writing.

(2) A maximum priority designation must be given to a facility that exhibits one or more of the following characteristics:

(a) documented release to surface water in a drinking water intake that is a public drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (November 1998 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(b) documented release to ground water in a drinking water well that is a public drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (November 1998 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(c) documented release into a drinking water line that is part of a public drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (November 1998 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(d) documented release to surface water in a drinking water intake that is a domestic or commercial drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (November 1998 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(e) documented release to ground water in a drinking water well that is a domestic or commercial drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (November 1998 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(f) documented release into a drinking water line that is a domestic or commercial drinking water supply, with:

(i) a documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (November 1998 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997); or

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141 (1997), concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use;

(g) presence of explosive vapor levels or concentrations of vapors that could cause acute health effects in a structure or utility corridor;

(h) indications of an imminent danger of fire or explosion or a release of dangerous levels of vapors in ambient air; or

(i) presence of free product in significant quantities in the ground water, in or on surface water bodies, in utilities other than water supply lines, or in surface water runoff.

(3) A high priority designation must be given to a facility whose release does not exhibit any of the characteristics provided in (2) but exhibits one or more of the following characteristics:

(a) documented release to surface water that is a drinking water source with:

(i) no documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (November 1998 edition) or a standard established as a drinking water maximum contaminant level listed at 40 CFR 141 (1997) in a drinking water supply intake; and

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141 (1997), no concentration at levels that render the water harmful, detrimental, or injurious to a beneficial use in a drinking water supply intake;

(b) documented release to ground water that is a drinking water source with:

(i) no documented or probable exceedance of a Montana water quality human health standard listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (November 1998 edition) or a standard established as drinking water maximum contaminant level listed at 40 CFR 141 (1997) in a drinking water supply well; and

(ii) for substances whose parameters for human health are not listed in WQB-7 or 40 CFR 141 (1997), no concentrations at levels that render the water harmful, detrimental, or injurious to a beneficial use in a drinking water supply well;

(c) documented release to ambient air that poses a threat to public health;

(d) documented release of friable asbestos-containing material on the ground surface that poses a threat to public health;

(e) migration of contamination to a utility corridor currently in use;

(f) threat of explosive vapor levels or concentrations of vapors that could cause health effects by accumulating in a structure or utility corridor;

(g) documented and extensive contamination of exposed shallow soil or exposed sediment with uncontrolled facility access;

(h) documented existence of a hazardous or deleterious substance in a container or impoundment that is leaking or that presents an imminent threat of leakage in an area with uncontrolled facility access;

(i) documented impact to a sensitive environment.

(4) A medium priority designation must be given to a facility that does not exhibit any of the characteristics provided for in (2) or (3) but exhibits one or more of the following characteristics:

(a) documented or probable release to surface water that is not a drinking water source but is used for a beneficial use;

(b) documented or probable release to ground water that is not a drinking water source but is used for a beneficial use;

(c) documented or probable release into a water line that is not used as a drinking water source but is used for a beneficial use;

(d) imminent threat from migration of contamination from soil to:

(i) surface water that is a drinking water source;

(ii) ground water that is a drinking water source; or

(iii) a water line that is a drinking water source;

(e) potential release to air that may pose a threat to public health;

(f) potential for migration of contamination to a utility corridor currently in use;

(g) documented contamination to a utility corridor not in use;

(h) documented or probable localized contamination of soil;

(i) presence of containers or impoundments containing hazardous or deleterious substances that are leaking or that present an imminent threat of leakage in an area with controlled facility access;

(j) documented or probable extensive contamination of soil with controlled facility access; or

(k) potential impact to a sensitive environment.

(5) A low priority designation must be given to a facility that does not exhibit any of the characteristics provided for in (2), (3), or (4) but which does require remedial action. A low priority facility exhibits one or more of the following characteristics:

(a) minimal potential for release to surface water that is not used for any purpose other than primary contact activities;

(b) minimal potential for release to ground water that is not used for any purpose other than primary contact activities;

(c) minimal potential for release into a water line that is not used for any purpose other than primary contact activities;

(d) minimal potential for release to air that may pose a threat to public health;

(e) minimal potential for release to a utility corridor;
or

(f) minimal documented release or potential for release to soil with minimal potential for direct contact hazard.

(6) An operation and maintenance designation must be given to a facility on the CECRA priority list at which remedial actions are complete but which is undergoing operation and maintenance, including but not limited to revegetation monitoring, surface water monitoring, ground water monitoring, or waste repository maintenance. Facilities with an operation and maintenance designation will be maintained on the CECRA priority list in a separate category.

(7) The department may reevaluate the rank of a facility if the department obtains or receives additional information that may cause a change in rank. Compliance with ARM 17.55.108 is not required to change the rank of the facility.

(8) Any person may submit a request to the department to evaluate a facility on the priority list for purposes of changing the rank of the facility. The request must be in writing and contain the rationale for the reclassification. The department may determine such a change in rank is appropriate. Compliance with Rule IV is not required to change the rank of the facility. (History: 75-10-702, 75-10-704, MCA; IMP, 75-10-702, 75-10-704, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99.)

Rules 17.55.112 and 17.55.113 reserved

17.55.114 DELISTING A FACILITY ON THE CECRA PRIORITY LIST

(1) Except as provided in (3) below, the department shall delist a facility from the CECRA priority list if:

(a) the department determines that all requirements of CECRA have been fully met, including the requirement that conditions at the facility assure present and long term protection of public health, safety and welfare, and the environment;

(b) the department determines that the facility should not have been listed based on subsequent investigation; or

(c) another state program assumes jurisdiction of the facility and that state program is addressing all the releases and threatened releases of all hazardous or deleterious substances at the facility.

(2) In determining whether to delist a facility from the CECRA priority list, the department shall consider whether:

(a) documented investigations or facility-specific risk analysis demonstrate that taking additional remedial actions is not appropriate to address the release or threatened release of hazardous or deleterious substances;

(b) liable persons or other persons have completed all appropriate remedial actions, including a final long term remedy, required by the department; and

(c) other relevant information or conditions exist that pertain to the issue of delisting the facility from the CECRA priority list.

(3) The department may not delete from the CECRA priority list a facility that is subject to continuing engineering controls or institutional controls unless the engineering or institutional controls consist of:

(a) deed restrictions or restrictive covenants that run with the land and that have been approved by the department and duly recorded;

(b) zoning restrictions; or

(c) a designated controlled ground water area as provided for in 85-2-506, MCA.

(4) The department may list on the CECRA priority list a facility that has previously been delisted from the CECRA priority list if a new release occurs or if the department receives new or different information regarding the need for further remedial action. In relisting, the department shall comply with the requirements of ARM 17.55.108.

(5) A facility at which remedial actions are being conducted under the Voluntary Cleanup and Redevelopment Act is eligible for delisting from the CECRA priority list after a petition for closure has been granted by the department pursuant to 75-10-738, MCA, and the other requirements of this rule are met.

(6) Prior to delisting a facility on the priority list, the department shall provide the opportunity for public comment, as follows:

(a) The department shall publish a notice of the proposed delisting in a daily newspaper of general circulation in the county where the community most likely to be threatened by the facility that is proposed for delisting is located.

(b) The notice must provide 30 days for submission of written comments to the department regarding the proposed delisting.

(c) The department shall notify the county commissioners, local boards of health created pursuant to 50-2-104 through 50-2-107, MCA, and governing bodies of cities, towns, or consolidated local governments in the community most likely to be threatened by the facility that is proposed for delisting.

(d) The department may conduct a public meeting in the community most likely to be threatened by the facility that is proposed for delisting without a specific request for such meeting.

(e) The department shall conduct a public meeting in the community most likely to be threatened by the facility that is proposed for delisting upon written request within the comment period by 10 or more persons, by a group composed of 10 or more members, or by a local governing body of a city, town, or county.

(f) The department shall consider and respond in writing to relevant written comments properly submitted during the comment period or at the public meeting.

(7) Any person may submit a request to the department to delist a facility on the priority list. The request must be in writing, contain the rationale for the delisting, and indicate with specificity how the requirements of this rule have been met. If the department determines delisting is appropriate, compliance with (6) is required. (History: 75-10-702, MCA; IMP, 75-10-702, MCA; NEW, 1999 MAR p. 837, Eff. 4/23/99.)

